

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON EDUCATION**

**Call to Order:** By **CHAIRMAN JOAN ANDERSEN**, on February 24, 2003  
at 3:00 P.M., in Room 137 Capitol.

#### **ROLL CALL**

##### **Members Present:**

Rep. Joan Andersen, Chairman (R)  
Rep. Larry Lehman, Vice Chairman (R)  
Rep. Norman Ballantyne (D)  
Rep. Gary Branae (D)  
Rep. Nancy Fritz (D)  
Rep. Carol Gibson (D)  
Rep. Verdell Jackson (R)  
Rep. Bob Lake (R)  
Rep. Bob Lawson (R)  
Rep. Joe McKenney (R)  
Rep. Clarice Schrumpf (R)  
Rep. Pat Wagman (R)

**Members Excused:** Rep. Kathleen Galvin-Halcro, Vice Chairman (D)  
Rep. Norma Bixby (D)

**Members Absent:** None.

**Staff Present:** Eddy McClure, Legislative Branch  
Mari Prewett, Committee Secretary

**Please Note.** These are summary minutes. Testimony and discussion are paraphrased and condensed. The time stamp on these minutes appears at the end of the content it refers to.

##### **Committee Business Summary:**

Hearing & Date Posted:  
Executive Action: HB 630; HB 685; HB 704

EXECUTIVE ACTION ON HB 630

Motion: REP. LEHMAN moved that HB 630 DO PASS.

Motion: REP. ANDERSEN moved that HB 630 BE AMENDED.

**EXHIBIT**(edh41a01)

Discussion:

CHAIRMAN ANDERSEN explained the Amendment to the Committee, attached as Exhibit 1.

Vote: Motion carried 14-0 by voice vote with REPS. GALVIN-HALCRO and BIXBY voting aye by proxy.

Motion/Vote: REP. BALLANTYNE moved that HB 630 DO PASS AS AMENDED. Motion carried 14-0 by voice vote with REPS. GALVIN-HALCRO and BIXBY voting aye by proxy.

Motion/Vote: REPS. FRITZ and LAWSON moved that HB 630 be placed on the Consent Calendar. Motion carried 14-0 by voice vote with REPS. GALVIN-HALCRO and BIXBY voting aye by proxy.

EXECUTIVE ACTION ON HB 704

Motion: REP. LAWSON moved that HB 704 DO PASS.

Discussion:

REP. BALLANTYNE informed the Committee that he opposed the bill.

REP. BRANAE stated that he opposed HB 704 and explained that he saw no reason to adopt it.

REP. LAKE spoke in support of HB 704. He commented on the fact that he had received numerous e-mails asking him to support the bill. He went on to talk about the benefits of charter schools in small communities and on reservations.

REP. LEHMAN commented on the fact that charter schools did not have to comply with Title 20, therefore, he opposed the bill.

REP. GIBSON spoke in opposition to HB 704, stating that there were already rules in place allowing charter schools.

**REP. JACKSON** declared that he would support HB 704. He pointed out that charter schools allowed more flexibility and would stretch funding. He went on to say that charter schools did more to accommodate the students.

**REP. LAKE** asked for an explanation of Title 20. **Ms. McClure** informed him that it was all of the school laws.

**REP. WAGMAN** stated that he supported HB 704. He continued that he felt the bill would allow for quality through competition.

**CHAIRMAN ANDERSEN** informed the Committee that she had done research and felt that charter schools could tailor their programs to meet the needs of students at risk of dropping out of school. She further indicated that charter schools could be beneficial to minority populations.

**REP. SCHRUMPF** indicated that she would support the bill.

**REP. BALLANTYNE** remarked that he had some concerns as to whether or not charter schools could be held accountable.

**REP. JACKSON** spoke about accountability and indicated that he thought the charter schools would show accountability through their outcome.

**REP. LEHMAN** stated he was concerned about accreditation, the availability of extracurricular activities and the possibility of lawsuits in connection with charter schools.

*{Tape: 1; Side: A; Approx. Time Counter: 0 - 29.6}*

**REP. JACKSON** informed the Committee that private schools could participate in sports activities during the school year, however, they could not participate in tournaments. He went on to say that the private schools were accredited by their own private organizations, with some being national and others being regional.

**Vote:** Motion failed 6-8 with REPS. JACKSON, MCKENNEY, LAKE, WAGMAN, SCHRUMPF and ANDERSEN voting aye, with REPS. BIXBY and GALVIN-HALCRO voting no by proxy.

**Motion/Vote:** REP. LAKE moved that THE VOTE REVERSED AND HB 704 BE TABLED. Motion carried 14-0 by voice vote, with REPS. BIXBY and GALVIN-HALCRO voting aye by proxy.

*{Tape: 1; Side: B; Approx. Time Counter: 0 - 3.1}*

**EXECUTIVE ACTION ON HB 685**

**Motion:** REP. LEHMAN moved that HB 685 DO PASS.

**Motion:** REP. WAGMAN moved that HB 685 BE AMENDED.

**EXHIBIT** (edh41a02)

**Discussion:**

**Bob Runkel, Office of Public Instruction,** explained the Amendments to the Committee, attached as Exhibit 2.

**CHAIRMAN ANDERSEN** asked Mr. Runkel if passing the amendment would prevent AYA from being under the umbrella of Jefferson County High School which would allow them to fund the education that they were already providing to the students. **Mr. Runkel** answered that using the term Child Care Agency/Residential Treatment Center would achieve what was being attempted by keeping the scope narrow.

**CHAIRMAN ANDERSEN** asked Ms. McClure if the bill could be amended according to Mr. Runkel's wishes. **Ms. McClure** indicated that she understood what Mr. Runkel wanted and explained how she thought it could be accomplished.

**Ms. McClure** referred the Committee to Amendment 4 on Exhibit 2 that is not simply a technical name change. She went on to explain that Number 4 was inserting new language which would be a substantive change.

**CHAIRMAN ANDERSEN** asked Mr. Runkel if it would cause any problems to segregate Amendment 4 out of Exhibit 2, work on the name changes and then discuss Amendment 4. **Mr. Runkel** answered that it would not cause any problems.

**CHAIRMAN ANDERSEN** asked Mr. Runkel if by combining Child Care Agency and Residential Treatment Center it would affect something in another part of the law that had a numerical limit as far as what the facilities could provide. **Mr. Runkel** replied that he could not answer that question.

**REP. JACKSON** asked Mr. Runkel if what was being done with the AYA program could be done with autistic kids so that they could be put into the same facility. He went on to ask if it would

violate the special education laws. **Mr. Runkel** indicated that it would violate the laws.

**Vote:** Motion carried 14-0 by roll call vote with REP. BIXBY and GALVIN-HALCRO aye by proxy.

*{Tape: 1; Side: B; Approx. Time Counter: 3.1 - 17.1}*

**Motion:** REP. LAKE moved that HB 685 BE AMENDED.

**EXHIBIT**(edh41a03)

**CHAIRMAN ANDERSEN** explained the Amendment, attached as Exhibit 3.

**REP. GIBSON** asked REP. ANDERSEN if the Amendment would exclude kids from outside of Montana. **CHAIRMAN ANDERSEN** responded that it meant that the State of Montana would not pay for out-of-state kids.

**Vote:** Motion carried 14-0 by voice vote with REPS. BIXBY and GALVIN-HALCRO voting aye by proxy vote.

**Eddy McClure** explained to the Committee that they would be using the Office of Public Instruction's grey bill, which was handed out on February 21, 2003, as a reference for REP. BRANAE'S proposed Amendments, attached as Exhibit 4.

**EXHIBIT**(edh41a04)

**Motion:** REP. WAGMAN moved that HB 685 BE AMENDED.

**EXHIBIT**(edh41a05)

**Discussion:**

**REP. WAGMAN** stated that he would like to segregate the Amendments. He went on to say that he would like to put Amendments 1 and 5 together and leave 2,3 and 4 for further discussion.

**Motion/Vote:** REP. WAGMAN moved that AMENDMENTS 1 AND 5 OF EXHIBIT 5 DO PASS. Motion carried 14-0 by voice vote, with REPS. BIXBY and GALVIN-HALCRO voting aye by proxy.

*{Tape: 1; Side: B; Approx. Time Counter: 17.1 - 25.1}*

**Motion:** REP. LEHMAN moved that HB 685 BE AMENDED.

**Discussion:**

**Eddy McClure, Legislative Services**, stated that they were working on Amendments 2, 3 and 4 of Exhibit 5. She went on to explain how Amendments 2, 3 and 4 fit into the grey bill, Exhibit 4.

**REP. BALLANTYNE** asked Ms. McClure if the language, "adjudicated by" was still in the bill. **Ms. McClure** stated that it was and explained where, in the grey bill, it would be located.

**REP. JACKSON** asked how the facility could meet accreditation.

**REP. GIBSON** answered that in her notes she had that the facility was accredited and had qualified teachers.

Ms. McClure read the appropriate Code to the Committee relating to accreditation.

**REP. BALLANTYNE** asked how long it would take for AYA to get accreditation. **CHAIRMAN ANDERSEN** replied that it was her understanding that AYA was not accredited. She went on to say that it was her understanding that AYA was hopeful that they would be accredited by the sunset date of the bill.

**Ms. McClure** interjected that it was her understanding that what was being asked was that the Board of Public Education would create a category under which AYA could become accredited.

**Jeff Weldon, Office of Public Instruction**, informed the Committee that AYA was not accredited. He went on to say that AYA had applied for accreditation, and that it had been determined that they were not eligible for accreditation under current standards. He further explained that the Board of Public Education had indicated a desire to try to come up with a category whereby AYA would be able to gain accreditation.

**REP. WAGMAN** stated that it was because it was a complicated issue that he had segregated the Amendments. He further stated that he felt it was important to keep the door open for the AYA Program as students with those types of problems had very few options open to them, therefore, he would vote against the remaining amendments.

**REP. JACKSON** stated that the only way he could see AYA being accredited would be through output with an individual education plan for each child. He explained that the standard accreditation document simply did not fit the AYA Program. **REP.**

**JACKSON** pointed out that they needed to give the program the flexibility it needed to do the job that they already knew how to do, rather than try to change them to meet accreditation standards that did not lend themselves to the situation.

**CHAIRMAN ANDERSEN** asked Mr. Weldon if the Amendments were not voted into the bill, if it would jeopardize the possibility of Jefferson County High School working out an agreement with AYA so that they could receive funding for the students that they are currently providing an education for. **Mr. Weldon** responded that she was correct. He went on to say that Jefferson County High School was responsible for the kids, and AYA was presently providing the services for them. He continued that AYA and the school district had not been able to come to an agreement on how to handle the situation.

**CHAIRMAN ANDERSEN** asked Mr. Weldon if the Committee did not accept the Amendments into the bill would they be leaving out two categories of youth that were currently being served at AYA. **Mr. Weldon** answered that it was a correct assumption.

**REP. WAGMAN** asked how Amendment 2 tied in with accreditation on Amendment 4. **Mr. Weldon** answered that under current law for a district to receive ANB (Average Number Belonging) they would have to contract with an accredited program. He continued by saying that the purpose of the bill was to say that AYA was not accredited but were seeking accreditation. **Mr. Weldon** pointed out that he had suggested that AYA not only have to be accredited but also be eligible for accreditation. He explained that if they were not eligible for accreditation, there would be no quality assurance. He continued that being eligible for, and having applied for accreditation, would narrow the field down.

**REP. WAGMAN** asked Mr. Weldon if Amendment 4 failed would AYA get ANB money. **Mr. Weldon** replied that the answer would be yes.

**CHAIRMAN ANDERSEN** asked Mr. Weldon if they segregated Amendment 2 and 3 from 4 would they be helping Jefferson County High School to receive the funding. **Mr. Weldon** answered "Yes."

**Motion:** **REP. WAGMAN** moved TO SEGREGATE AMENDMENT 4 FROM 2 AND 3 OF EXHIBIT 5.

**Discussion:**

**Ms. McClure** informed the committee that Amendments 3 and 4 of Exhibit 5 were incorrect Amendments. She referred the Committee

to the grey bill, Exhibit 4, and explained that it would be an amendment to Subsection (2) of the grey bill.

**CHAIRMAN ANDERSEN** asked REP. WAGMAN if what he wanted to segregate out was Subsection (2) on Exhibit 4. **REP. WAGMAN** indicated that was what he had intended to do.

**Motion:** **REP. WAGMAN** moved TO SEGREGATE OUT SUBSECTION (2) OF EXHIBIT 4 and moved AMENDMENT 2 OF EXHIBIT 5.

**Discussion:**

**REP. FRITZ** asked CHAIRMAN ANDERSEN why they needed to care about "eligibility" and "qualified for," and why would it not be that they had accreditation. She went on to ask what she was missing.

**Ms. McClure** responded that the facilities in question were private facilities. Therefore, the only way the facilities could obtain funding, by the State Constitution, would be for the facility to contract with Jefferson County. She continued that the facility was asking to become accredited, however, even if they were to become accredited the funds would still have to route through the local school district.

**REP. FRITZ** asked Ms. McClure if they could say that the facility would have to be accredited before they would be eligible for the funds. **Ms. McClure** responded that the goal was for the Board of Education to create a category under which the facility could be accredited. She went on to say that the facility needed to be eligible for accreditation in order for them to get funding through the local school district. At the present time the facility does not meet any of the accreditation standards.

**CHAIRMAN ANDERSEN** explained that occasionally some of the students had gone to the local high school. She continued that normally the students received their education on the campus of the facility.

**REP. JACKSON** asked Mr. Weldon if he would explain to the Committee why the students were not counted through Jefferson County High School and why Jefferson County High School could not contract with whomever they wanted to provide the services. **Mr. Weldon** responded that under the current status of the law, by Constitutional provision, State money could only go to public schools. He went on to say that the school district was on the hook for the kids, by way of 41-5-103. He continued that the choice that the district would have, would be to enroll the kids in the local school and then figure out if they could do an educational program for them in-house, or not. He asked, "If they could not do it in-house, then what?" **Mr. Weldon** answered

that under existing law, a school district could contract with a private entity as long as that private entity was accredited, the school district had sent certified teachers out to teach the kids, or the kids had been placed in the private school by way of an IEP (Individualized Education Plan), then the money could flow from the State to the local school district to the private facility. **Mr. Weldon** stated that the problem with AYA was that it was not accredited and was not eligible for any current standard of accreditation.

**Vote:** Motion carried 14-0 by roll call vote with REPS. BIXBY AND GALVIN-HALCRO voting aye by proxy.

**Motion:** REP. LAWSON moved that HB 685 BE AMENDED.

**Discussion:**

**REP. LAWSON** stated that he thought it was important to keep the proposed language in Subsection (2) of the grey bill, Exhibit 4, relating to eligibility and accreditation in HB 685. He went on to say that he was not interested in funneling money to a nonaccredited facility.

**REP. WAGMAN** asked Ms. McClure that if they voted for the Amendment would they be saying that AYA would have to be eligible and accredited to receive funds? He went on to ask if they voted against the amendment, would they be saying that AYA would not have to be eligible and would not have to be accredited? **Ms. McClure** stated that the bill as written stated that they would have to be eligible and have applied for accreditation. **Mr. Weldon** responded that he did not believe that AYA would be eligible for accreditation. Therefore, the characterization would be accurate.

**REP. WAGMAN** commented that the problem with the amendment was that if they were to pass the amendment AYA would not be able to receive funds because they were not eligible.

**REP. GIBSON** stated that she felt that the requirements would be tweaked so that AYA could be funded. She further commented that she felt the requirements would be tight enough that it would not spread statewide and cause a problem.

**{Tape: 2; Side: A; Approx. Time Counter: 0 - 28}**

**REP. JACKSON** stated that he would not vote for the amendments as they were. He continued that he felt that they should be able to give the funds to AYA anyway.

**REP. WAGMAN** commented that if they were to vote for the Amendment they would not be helping Jefferson County. He went on to say that if they could not get the money to the school district through the bill, Jefferson County would still be on the hook.

**REP. BALLANTYNE** stated that the question he had was if any of the other alternative schools, such as Largent School in Great Falls, received State funds. **REP. MCKENNEY** stated that he believed that Largent School was part of the school district.

**REP. LAKE** asked if AYA were to be locked into an eligible and applied-for status, would they be chopped off until OPI created a set of rules that would allow them to be eligible and would allow them to be accredited? **Mr. Weldon** explained that it was very complicated. He went on to say that AYA would have to go before the Board of Public Education, and the Board would have to put the package together that AYA would fit into and OPI would then try to figure out a way to make it work.

**REP. BALLANTYNE** remarked that since AYA thought they could have their accreditation in place by 2005, he would support the Amendment.

**CHAIRMAN ANDERSEN** asked Mr. Weldon if they passed the amendment, and because AYA was not eligible, would the Committee be closing off the possibility that Jefferson County High School could receive funds for the AYA students? **Mr. Weldon** replied, "Yes."

**REP. WAGMAN** explained that AYA was not making any money; that they were probably educating the youth for less than the State could. He continued that if AYA were to go under, the youth would probably end up in correctional institutions, State-run facilities of some type or would go to a medical institutions. Then once they reached 18 they would probably end up in the correctional system.

**REP. LEHMAN** stated that he had a problem with the bill and explained why. He further asked Mr. Runkel why the kids had been adjudicated to AYA instead of some of the other places available. **Mr. Runkel** explained that some of the children in the program were sent there because of significant emotional disturbances, in addition to their adjudicated status. He went on to say that the financing of the Department of Public Health and Human Services was tight, particularly with mental health, and the agency had done a number of movements over the past year to insure that the rate of reimbursement that was being provided to organizations did not include education. The Department of Public Health feels that education is the responsibility of schools, not of the mental health system. He continued that the rate structure had

changed and that was the reason AYA was having a money crunch. He went on to say that the reason the children had been placed in that particular facility was that the other facilities may or may not have had licensure. If the facility did not have licensure the Courts would not place children in that facility. He went on to explain that AYA ran an unique service in that it was a wilderness type of program, where the kids were taken away from civilization and taught skills that might be aligned with a particular problem that had presented itself, and had put that child before the Court. The nature of the program, as well as the fact that the program was licensed, was probably the determining factor in the Judge's decision about that particular program.

REP. BIXBY arrived at the Hearing.

**Vote: Motion failed 4-8 with REPS. LEHMAN, BIXBY, BALLANTYNE and LAWSON voting aye by roll call vote.**

**Motion/Vote: REP. LAKE moved that HB 685 DO PASS AS AMENDED. Motion carried 8-6 by roll call vote with REPS. LEHMAN, BALLANTYNE, BRANAE, FRITZ, LAWSON and GALVIN-HALCRO voting no, with REP. GALVIN-HALCRO voting no by proxy.**

***{Tape: 2; Side: B; Approx. Time Counter: 0 - 17}***

**ADJOURNMENT**

Adjournment: 4:57 P.M.

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REP. JOAN ANDERSEN, Chairman

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MARI PREWETT, Secretary

JA/MP

**EXHIBIT** (edh41aad)